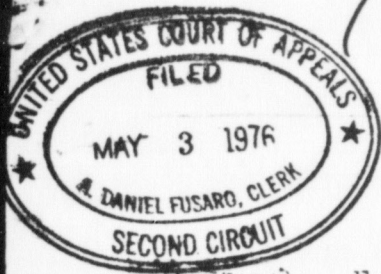


***United States Court of Appeals
for the Second Circuit***



APPENDIX



76-6053

APPENDIX

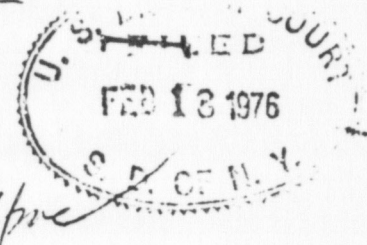
B
PIS

EX. 1

ENDORSEMENT

Crouch v. Weinberger

73 Civ. 2703



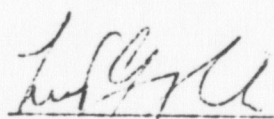
The within "Notice of Settlement" is treated as a motion for an order directing the Department of Health, Education & Welfare to make certain payments to the plaintiff. - The motion is denied.

Section 223(c) of the Social Security Act, 42 U.S.C. § 423(c), as in effect for the purposes of this action created a statutory waiting period of six months between the onset of disability and the commencement of disability payments. Upon review of the record before Judge Tyler in this matter and upon review of Judge Tyler's memorandum decision entered July 19, 1974, this Court finds that the plaintiff was found by Judge Tyler to have been disabled within the meaning of the Social Security Act beginning with February, 1966. Payments were made for the period beginning September, 1966 which is precisely what is required by the statute and Judge Tyler's order.

Accordingly, plaintiff's motion for an order directing additional payments is denied.

So Ordered.

Dated: New York, New York
February 17, 1976



U.S.D.J.

MICROFILM

1976

PAGINATION AS IN ORIGINAL COPY

NOTICE OF ENTRY

Please take notice that the within is a (certified)
true copy of a
copy entered in the office of the clerk of the within
named court on
19

I dated,

Yours, etc.,

~~AARON RECHACHER~~

Attorney for

Office and Post Office Address
32 COURT STREET
BROOKLYN, NEW YORK 11201

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:— Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

~~AARON RECHACHER~~

Attorney for

Office and Post Office Address
32 COURT STREET
BROOKLYN, NEW YORK 11201

Attorney(s) for

Index No. 73 Civ. 2703 Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES H. CROUCH,

Plaintiff,

-against-

UNITED STATES OF AMERICA
CASPER W. WILSON
of Health, Education and Welfare

JUN 19 1973

S. D. OF N. Y.

NOTICE OF MOTION AND
AFFIDAVITS

SARA HILBERT
ATTORNEY AT LAW
Attorney for Plaintiff

Office and Post Office Address, Telephone
32 COURT STREET
BROOKLYN, NEW YORK 11201

WESTCHESTER 237-1800

To

Attorney(s) for

Service of a copy of the Motion

is hereby certified.

Attorney(s) for

*There being no opposition
The application for removal
fee and disability benefits
on behalf of James H. Crouch
is granted. The application
for disability benefits
on behalf of James H. Crouch
is denied with prejudice.*

SO ORDERED

6/19/73 *Lord G. Smith*
Ad 49

20161

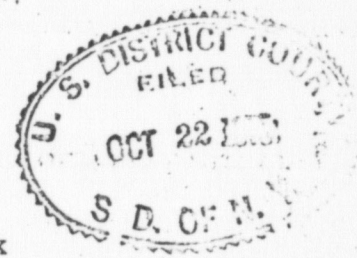
11/10/73

EX. 2

B

EX. ~~33~~ 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
JAMES H. CROUCH,

Plaintiff,

-against-

UNITED STATES OF AMERICA and CASPER W.
WEINBERGER, Secretary of Health, Education
and Welfare,

Defendants.
-----x

ORDER

73 Civ. 2703

LF

MICROFILM

OCT 22 1975

A motion having been made by JAMES H. CROUCH, the plaintiff, through his attorney, SARA HALBERT, ESQ., in the above entitled action, for an Order directing the Department of Health, Education and Welfare, Social Security Administration, to make payment of all counsel fees to Sara Halbert and disability benefits to James H. Crouch, and

On reading and filing the affidavit of Sara Halbert, sworn to the 15th day of May, 1975, the affidavit of James H. Crouch, sworn to the 7th day of May, 1975, and the affidavit of V. Pamela Davis, a United States Attorney, sworn to the 23rd day of May, 1975, on behalf of Health, Education and Welfare, consenting to the payment of counsel fees to Sara Halbert but opposing payment of benefits to James Crouch, Jr., and

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MAY 15 1975

Upon reading and filing the Notice of Motion herein, dated the 15th day of May, 1975, with proof of due service thereof, and after reading and filing all the prior papers and proceedings heretofore had herein, and it appearing that there is no opposition to the payment of counsel fees to Sara Halbert,

NOW, on motion of Sara Halbert, attorney for the plaintiff, it is

ORDERED that the H.E.W. make payment to Sara Halbert of \$1,210.00 , representing 25% of the \$4,840.60 proceeds payable to James H. Crouch on his behalf; and it is further

ORDERED THAT that portion of the motion with regard to the payment of disability benefits to James H. Crouch on behalf of James Crouch, Jr., is denied, without prejudice.

DATED: NEW YORK, N.Y.

~~FILED~~ OCTOBER 21, 1975

[Signature]
Justice, United States District
Court - Southern District of New York

VPD:ELC
73-2055
D-56

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES H. CROUCH,

Plaintiff,

- v -

UNITED STATES OF AMERICA and
CASPER W. WEINBERGER, Secretary
of Health, Education and Welfare,

Defendants.

NOTICE OF SETTLEMENT

73 Civ. 2703 (HRT)

NOV 12 1974

S. D. C. F. R.

S I R S :

PLEASE TAKE NOTICE that the within Judgment will be presented for signature and settlement to the Honorable Harold R. Tyler, Jr., United States District Judge, on the 8th day of November, 1974, in Room 1903 of the United States Courthouse, Foley Square, New York, New York.

Dated: New York, New York

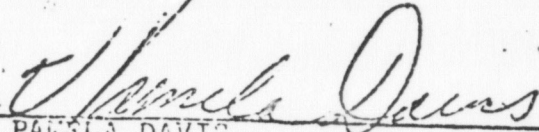
October 29, 1974

EX. II
(B. Ex. 2)
EX 4

Very truly yours,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Plaintiff,
United States of America

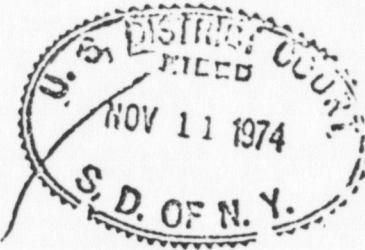
By:


V. PAMELA DAVIS
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007
Telephone No.: (212) 791-1976

TO: ZAPATA & HALEERT, ESQS.
277 Broadway
New York, New York 10007

73-2099
D-56

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
JAMES H. CROUCH,

Plaintiff,

- v -

UNITED STATES OF AMERICA and
CASPER W. WEINBERGER, Secretary
of Health, Education and Welfare, :

Defendants. :
-----x

JUDGMENT

73 Civ. 2703 (HRT)

A complaint having been filed by plaintiff herein and duly served upon defendant on June 26, 1973 and defendant having timely answered the complaint and having moved for judgment on the pleadings, and the said motions having come on to be heard before the Honorable Harold R. Tyler, Jr., United States District Judge, and the court thereafter on July 19, 1974 having handed down its memorandum decision granting the defendant's motion in part and denying it in part and directing the clerk to enter judgment affirming the

decision of the Secretary in part and setting aside the
decision of the Secretary in part and ordering that plaintiff
be granted a period of disability and disability benefits
from February, 1966 until September, 1969 when plaintiff was
discharged from Matteawan Hospital, and denying plaintiff a
period of disability and disability benefits from the date
of discharge from Matteawan until September 30, 1971 it is:

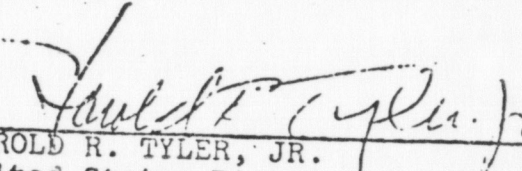
ORDERED, ADJUDGED AND DECREED, that plaintiff,
James H. Crouch, have partial judgment against the defendant,
Secretary of Health, Education and Welfare, setting aside the
decision of the Secretary in part and ordering that plaintiff
be granted a period of disability and disability benefits
from February, 1966 until his discharge from Matteawan Hospi-
tal in September, 1969 and that defendant have partial judgment

V.D.SIC
73-2055
D-56

against the plaintiff affirming the decision of the Secretary in part and denying plaintiff a period of disability and disability benefits from the date of his discharge from Matteawan in September, 1969 until September 30, 1971.

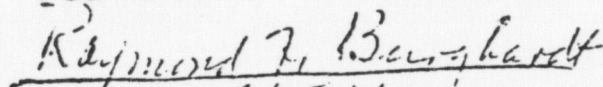
Dated: New York, New York

November 8th, 1974


HAROLD R. TYLER, JR.
United States District Judge

MP

JUDGMENT ENTERED 11-11-74


CLERK

I take notice that a copy of this day was this day
is the within entitled action,
the Clerk of this Court.

N. Y., -----, 19--

Yours, etc.,

United States Attorney
Attorney for -----

Attorney for -----

I take notice that the within -----
be presented for settlement and sig-
re to the Honorable -----
ed States District Judge, at the office of
Clark, Room 601, United States Court-
e, Foley Square, Borough of Manhattan,
of New York, on the ----- day of -----
---, at 10:30 o'clock in the ----- noon
soon thereafter as counsel can be heard.

ed. N. Y., -----, 19--

Yours, etc.,

United States Attorney
Attorney for -----

Attorney for -----

United States District Court

SOUTHERN DISTRICT OF NEW YORK

JAMES H. CROUCH,

Plaintiff,

- v -

UNITED STATES OF AMERICA and
CASPER W. WEINBERGER, Secretary
of Health, Education and Welfare,

Defendants.

NOTICE OF SETTLEMENT AND JUDGMENT

73 CIV. 2703 (HRT)

PAUL J. CURRAN

TEL. XXXXX
791-1976
United States Attorney
Attorney for -USA--

Due service of a copy of the within is here-
by admitted.

New York, -----, 19--

Attorney for

To

Attorney for

FD-11-2-73-504-6784

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES H. CROUCH,

Plaintiff,

-against-

NOTICE OF SETTLEMENT

UNITED STATES OF AMERICA and CASPER W.
WEINBERGER, Secretary of Health, Education
and Welfare,

73 Civ. 2703

Defendants.
-----X

S I R S:

PLEASE TAKE NOTICE that the within Supplemental Judgment
will be presented for signature and settlement to the Honorable Lee F.
Gagliardi, United States District Judge, on the 24th day of December, 1975,
of the United States Courthouse, Foley Square, New York, New York.

Dated: New York, New York
December 12, 1975

Very truly yours,

SARA HALBERT
Attorney for Plaintiff
32 Court Street
Brooklyn, New York 11201
(212) 237-1300

TO:

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States of America
BY: V. PAMELA DAVIS
Assistant U.S. Attorney
United States Courthouse
Foley Square
New York, New York 10007

At a Motion Term, Part I thereof, of
the United States District Court, for
the Southern District of New York,
held at the Federal Courthouse, Foley
Square, New York, New York, on the
day of December, 1975

P R E S E N T:

HON. LEE F. GAGLIARDI

Judge

----- -X
JAMES H. CROUCH,

Plaintiff,

-against-

SUPPLEMENTAL JUDGMENT

73 Civ. 2703

UNITED STATES OF AMERICA and CASPER W.
WEINDERGER, Secretary of Health, Education and
Welfare,

Defendants.
----- -X

A complaint having been filed by the Plaintiff herein and
duly served upon Defendant on June 26, 1973 and Defendant having timely
answered the complaint and having moved for judgment on the pleadings, and
the said motions having come on to be heard before the Honorable Harold R.
Tyler, Jr., United States District Judge, and the Court thereafter on July 19,
1974 having handed down its memorandum decision granting the Defendant's
motion in part and denying it in part, and directing the Clerk to enter judgment
affirming the decision of the Secretary in part and setting aside the
decision of the Secretary in part and order that Plaintiff be granted a period
of disability and disability benefits from February 1966 until September 1969
when Plaintiff was discharged from Matteawan Hospital, and denying Plaintiff a
period of disability and disability benefits from the date of discharge from
Matteawan until September 30, 1971; and

Judgment having been entered and filed hereunder on November 11, 1974, pursuant to which the Honorable Harold R. Tyler, Jr. ordered, adjudged, and decreed that Plaintiff James H. Crouch have partial judgment against the Defendant, Secretary of Health, Education and Welfare, setting aside the decision of the Secretary in part and ordering that Plaintiff be granted a period of disability and disability benefits from February 1966 until his discharge from Matteawan Hospital in September, 1969; and

A motion having been made by James H. Crouch, the Plaintiff in the above entitled proceeding by his attorney, SARA HALBERT, Esq. for the payment of Social Security Benefits to be paid to the said James H. Crouch for the period between February 1966 to September 1969 pursuant to the said order of the Honorable Harold R. Tyler, Jr., and for the payment of counsel fees of 25% of all benefits payable to the said Plaintiff James H. Crouch; and

On reading and filing the affidavit of SARA HALBERT, Esq., sworn to the 15th day of May, 1975, the affidavit of JAMES H. CROUCH, sworn to the 7th day of May, 1975, and the affidavit of V. PAMELA DAVIS, a United States Attorney, sworn to the 23rd day of May, 1975, consenting to the payment of benefits to the said JAMES H. CROUCH for the period February 1966 to September 1969, and the payment of counsel fees therefrom of 25%; and

The Social Security Award Certificate dated January 29, 1975 having computed benefits payable to the Plaintiff JAMES H. CROUCH commencing September 1966 to September 1969 of \$40.60; and

Consequently there being still due to the said Plaintiff seven additional months of disability benefits, between the period between February 1966 up to and including August 1966, as directed by this Court in the decision of the Honorable Harold L. Tyler, Jr. dated July 19, 1974; and

There being no opposition, the Court, by its decision of

June 19, 1975, having granted the motion of JAMES H. CROUCH for benefits during the period February 1966 and September 1969, and the payment of counsel fees; and

Pursuant to Section 205 (g) of the Social Security Law, said decision of the Court is deemed final;

NOW, THEREFORE, on motion of SARA HALBERT, attorney for the Plaintiff, it is

ORDERED that the Defendant, Secretary of Health, Education and Welfare shall pay to the Plaintiff, JAMES H. CROUCH, the additional sum of \$809.20, computed at the rate of \$115.60 for the seven months between February 1966 to and including August 1966; and that the said Defendant deduct therefrom the sum of \$202.30, representing 25% for counsel fees; and it is

FURTHER ORDERED that the sum of \$606.90 be paid directly to the plaintiff, JAMES H. CROUCH; and it is

FURTHER ORDERED, that the sum of \$202.30 be paid directly to the attorney, SARA HALBERT.

E N T E R

J2D7C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EX. 6

JAMES H. CROUCH,

Plaintiff,

-v-

CASPAR WEINBERGER, Secretary of
Health, Education and Welfare,

Defendant.

AFFIDAVIT

73 Civ. 2703(LPG)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Thomas J. Cahill, United States Attorney for
the Southern District of New York and, as such, am in charge
of the defense of the above-captioned action.

2. I make this affidavit in opposition to plain-
tiff's motion to settle a supplemental judgment.

3. By memorandum decision entered July 19, 1974,
this court held that plaintiff was disabled within the
meaning of the Social Security Act from February of 1966
to September of 1969 and thus entitled to statutory benefits.

4. Pursuant to section 223(c) of the Social
Security Act, 42 U.S.C. 423(c), disability benefits do not
commence until six months after the onset of the disability.
Thus, plaintiff, by statute was entitled to benefits

commencing in September of 1966, which was six months from the date which this court determined to have been the beginning of plaintiff's disability.

5. According to the proposed supplemental judgment, plaintiff has received the benefits to which he is entitled, i.e. benefits from September of 1966 to September of 1969. What he seeks by this motion are benefits during the statutory "waiting period", i.e. benefits from February of 1966 through August of 1966, to which he is not entitled.

6. The judgment of this court, which was settled pursuant to the decision of the Hon. Harold R. Tyler, Jr., has been fully satisfied and plaintiff's motion for additional relief must be denied.

WHEREFORE, the motion to settle a supplemental judgment should be denied.

V. PAMELA DAVIS

V. PAMELA DAVIS
Assistant United States Attorney

Sworn to before me this

17th day of December, 1975

Notary Public

NOTARY PUBLIC
12/17/75

EX 7

Ex. I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES H. CROUCH,

Plaintiff,

-against-

SECRETARY OF HEALTH, EDUCATION
AND WELFARE,

Defendant.

ZAPATA & HALBERT, ESQS., New York City,
Attorney for Plaintiff.

PAUL J. CURRAN, ESQ., UNITED STATES
ATTORNEY, by Borge Varmer, Regional
Attorney, Department of Health, Education
and Welfare, and Mel P. Barkan, Assistant
United States Attorney.

TYLER, D.J.

Plaintiff seeks review, pursuant to § 205(g) of the Social Security
Act, as amended, ("the Act"), 42 U.S.C. § 405(g), of a decision of the

#40992

OPINION

..73 Civ. 2703 HRT

FILED
U.S. DISTRICT COURT
JUL 22 1 42 PM '74
S.D. OF N.Y.

APR 22 1974
MICROFILM

BEST COPY AVAILABLE

Secretary of Health, Education and Welfare ("the Secretary"), denying his application to establish a period of disability and for disability insurance benefits for a period of time from February, 1966 through September 30, 1971.^{1/}

PRIOR PROCEEDINGS

Two prior applications were filed before the Secretary on behalf of plaintiff alleging virtually the same reasons purporting to entitle him to disability benefits. The first such application was filed on November 2, 1966 by the Superintendent of Matteawan State Hospital for the Criminally Insane ("Matteawan"). This application was denied through the initial level on December 19, 1966. No further review was sought by the plaintiff or his representative.

The second application was filed on September 8, 1967. It was denied initially on October 25, 1967, on reconsideration May 10, 1968 and by a hearing examiner on November 27, 1968.^{2/} Judicial review

^{1/} As of September 30, 1971, plaintiff concededly no longer met the earnings requirement for disability purposes.

^{2/} The hearing examiner's decision was approved by the Appeals Council on March 4, 1969.

was not sought in connection with this application in which plaintiff was represented by the Superintendent of Matteawan.

PRESENT PROCEEDINGS

Plaintiff's present application for disability insurance benefits was filed before the Secretary on June 29, 1970. The application was denied initially and on reconsideration. Plaintiff requested a hearing which was held on November 25, 1972. Following the hearing, the administrative law judge found on January 30, 1973, that plaintiff was not under a disability. The decision of the administrative law judge became the final decision of the Secretary when it was approved by the Appeals Council on April 20, 1973.

Defendant moves for judgment on the pleadings affirming the decision of the Secretary. Defendant contends that the findings of fact and conclusions are supported by substantial evidence and are therefore conclusive.

BACKGROUND FACTS

Plaintiff is 45 years old, received ten years of schooling, was awarded a high school equivalency diploma and subsequently attended

college for approximately one year. He served in the United States Army for approximately 13 years and worked as an equipment repairman for 7 years. He was confined in a mental institution from June, 1966 through September, 1969. He alleges disability due to mental illness from February, 1966 to September 30, 1971.

The medical evidence of record may be summarized as follows: Plaintiff was admitted to Bellevue Hospital on April 1, 1966, for examination after being arrested and charged with first degree murder of his wife. In the hospital's view, he was suffering from a mental disorder diagnosed as psychosis, paranoid type, and was "in such a state of insanity as to be incapable of understanding the charge, indictment, proceedings, or of making his defense."^{3/} He was designated to be a suitable candidate for commitment to a mental hospital, and on August 22,

^{3/}

As required by law, the report was submitted and signed by two qualified psychiatrists (Alan Holden, M. D., and A. Leonard Abrams, M. D.) designated by the Director of Bellevue Psychiatric Hospital, New York City.

1966, he entered Matteawan, where his illness was again described as a paranoid condition.

The hospital, when queried by the New York State Agency on February 6, 1968, reported that the patient was "relatively comfortable on medication,"^{4/} and that he remained in a paranoid state. The reporting doctor characterized the condition as "probably having existed for many years before the murder. However, it may tend to be chronic and at times worsen."

In reply to a second inquiry made on April 23, 1968, by the New York State Agency, the hospital reported that the patient was still considered "not well enough to stand trial." The report continued:

"He is also described as withdrawn and preoccupied at times. However, he is cooperative at other times, but when attempts at psychotherapy are made he can become hostile, especially when details about his wife are spoken of. Nevertheless he carries out an assignment in the clothing room. He works the usual number of hours that other patients work. There is a moderate amount

^{4/}

It appears from notes of various doctors who examined plaintiff from the date of his entry at Matteawan that plaintiff remained on various medications to maintain his emotional stability.

of responsibility required at this job. The claimant ordinarily does not require medication. However, when he does become belligerent, small doses of medication are employed.... The impairment is significant. The longstanding paranoid personality is, of course, still apparent. However, there is no evidence of acute psychosis present and the claimant is capable of carrying out responsibilities in his assignment."

On October 11, 1968, the Superintendent of Matteawan reported to the Social Security Administration that:

"...this patient is not employable in the community at the present time. As stated before he is rather withdrawn, preoccupied and although he works in the clothes room he is very sensitive to human contact and occasionally would get involved in fights. At present his mental condition is such that in case the criminal charges against him would be dismissed, we would request authorization for his admission to a civil hospital for further care and treatment."

In September, 1969, plaintiff was discharged as "fit to stand trial."

Beginning in April, 1970, plaintiff was examined on numerous occasions by Dr. G.F. Osler, a neuropsychiatrist, who found evidence of feelings of sensitivity concerning racial discrimination somewhat accentuated by plaintiff's having been refused re-employment. But apart from this, Dr. Osler found plaintiff "relevant and coherent, expressing appropriate emotionality and revealing an intact sensorium."

There was no suggestion of psychosis.

On September 19, 1970, Dr. Osler submitted a second report in which he indicated that plaintiff's condition should be classified as an obsessive compulsive neurosis. He also stated that plaintiff was ~~not psychotic~~ and could engage in some sort of work which did not involve contact with many people and that his condition had remained stable for some time.

Plaintiff asserts that, since leaving the hospital, he has not been employed, although he received over \$2,000 in severance pay which was credited to his earnings record in 1969 and 1970. He is presently supported by a 100% service-connected Veterans Administration Compensation Award of \$516 per month, based on a combination of mental and physical factors. The mental condition was diagnosed as paranoid schizophrenia, competent, while his physical impairments included pes planus (flat feet) and hemorrhoids.

CONCLUSIONS

The scope of this review is limited by 42 U.S.C. § 405(g), which states that the "findings of the Secretary as to any fact, if supported by

evidence to support the examiner's finding that plaintiff was not disabled from 1966 through 1971, his decision must be affirmed, absent errors of law. Richardson v. Perales, 402 U.S. 389 (1971); Gold v. Secretary of Health, Education and Welfare, 463 F.2d 38, 41 (2d Cir. 1972).

This court has read and considered the transcript and the briefs filed in this case, and has concluded that the Secretary's decision that plaintiff failed to prove disability ^{5/} is not supported by substantial

^{5/}

"Disability" is defined by § 223(d)(2) of the Act:

"(A) an individual... shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country." (emphasis added)

The Secretary makes essentially two arguments in support of his motion to dismiss. First, he claims that the doctrine of res judicata bars any benefits through November 27, 1968, when the hearing examiner denied a previous application by plaintiff for benefits based upon the same disability alleged in his present application. In regard to the period of time after November 27, 1968, it is argued that the Secretary's decision is supported by substantial evidence and is thus entitled to affirmance.

For the purpose of this motion, plaintiff's claim can be divided into three time periods: (1) the period from February, 1966 through November 27, 1968, which defendant claims is barred by res judicata; (2) the period from November 27, 1968 through September, 1969, during which plaintiff remained in Matteawan; and (3) the period after September, 1969 to September 30, 1971, following plaintiff's discharge from Matteawan.

In regard to the third period of time after September, 1969 through September 30, 1971, the sole question is whether there was substantial evidence to support the HEW determination. 42 U.S.C. § 405(g). There is no question with regard to the period of time following plaintiff's

discharge from Matteawan that the Secretary's decision is supported by substantial evidence. Considerable evidence exists to show that plaintiff's mental condition improved substantially in 1970. Although plaintiff continued to experience emotional problems, they were not of the level of severity to qualify him for disability benefits. In his continuing observations of plaintiff, Dr. Osler found no psychosis and indicated "that claimant is capable of engaging in some sort of work, where he does not have to come in contact with many people." The fact that plaintiff has attempted unsuccessfully to find a job has no relationship to his entitlement to disability benefits. The test of disability is the inability to work in substantial gainful employment in the national economy, not the inability to find a job. Whiten v. Finch, 437 F.2d 73 (4th Cir. 1971); Woods v. Finch, 428 F.2d 469 (3d Cir. 1970).

Accordingly, with regard to the period of time after September, 1969 through September 30, 1971, I find that the Secretary's decision is supported by substantial evidence.

In regard to the first period of time, February, 1966 through November, 1968, defendant asserts that plaintiff is barred from receiving

benefits by the res judicata effect of a prior decision of a hearing examiner dated November 27, 1968. The government relies heavily upon Easely v. Finch, 431 F.2d 1351 (4th Cir. 1970). The court in Easely cited its previous holding in Grose v. Cohen, 406 F.2d 823 (4th Cir. 1969) and stated:

"In Grose v. Cohen we recognized that the doctrine of res judicata is not to be so inflexibly applied to work manifest injustice. In keeping with that principle, we held the doctrine inapplicable to a case where the Secretary's decision was founded on error manifest on the face of the record. In so holding, we did no more than apply an exception so well recognized that it is codified in the Social Security regulations." Easely at 1353.

Like most disability cases, Easely involved a disability due to physical, as opposed to mental, impairment. The plaintiff in Easely was unquestionably sane and mentally competent to institute a claim and to pursue that claim to its conclusion. Crouch, however, was a diagnosed psychotic suffering from paranoia who was adjudged incompetent to stand trial. Indeed, Crouch did not even institute the initial claim for benefits; rather the claim was instituted on his behalf by his custodians at Matteawan.

And, unlike Easely, in which it was the appellant himself who failed to seek judicial review, it was the Matteawan Hospital authorities who failed to act on plaintiff's behalf within the requisite time period. To my mind, this is one of those rare exceptions in which the dictates of fundamental fairness and equity compel reconsideration of the case.

Upon reconsideration of the decision of the Secretary with regard to the first and second periods of time, from February, 1966 through September, 1969, I find that the decision is not supported by substantial evidence. The medical authorities at Matteawan were unanimous in their reports that plaintiff suffered from a paranoid condition sufficiently severe to retain plaintiff as a patient for a period of almost four years. As late as October 11, 1968, the Superintendent of Matteawan unequivocally stated that plaintiff was not employable outside the hospital. The plaintiff continued to be a patient at Matteawan until September, 1969. The logical conclusion is that plaintiff remained at Matteawan because he was mentally disabled.

Plaintiff was similarly diagnosed at the time by the Veteran's Administration as suffering from schizophrenia, paranoid type. From

July 8, 1966 through October 1, 1970, the Veteran's Administration awarded plaintiff 100% disability benefits for his mental disability. From October 1, 1970 until the present, plaintiff has been diagnosed as being entitled to 70% disability benefits. Admittedly, these awards are not binding on the Secretary. The findings, however, are the result of psychiatric evaluations and are entitled to some weight. DePaepe v. Richardson, 464 F.2d 92 (5th Cir. 1972).

The government attributes crucial significance to the fact that plaintiff worked prior to his commitment in 1966, while suffering from his paranoid condition. The medical authorities concur that plaintiff's paranoid state "probably" had existed for many years prior to the date of the crime for which he was charged. The record indicates that the disorder dated back to the period of his military service when he believed himself to be discriminated against because of his race. The reasonable inference that must be drawn from the medical evidence, however, is that plaintiff's mental and emotional condition deteriorated rapidly and to a chronic level in 1966 - and only began to improve later as a result of medication and other treatment.

In reviewing plaintiff's file for the Veteran's Administration, two psychiatrists concluded in September, 1966 that plaintiff's "current psychosis is a maturation of his service-connected chronic psychoneurosis." While institutionalized, according to the psychiatrists at Matteawan, plaintiff's condition would worsen and, at times, become chronic. In summarizing the medical evidence, the HEW administrative law judge stated, "[h]e was placed on medication and showed steady improvement. In September, 1969, he was discharged as 'fit to stand trial.' " In his evaluation of the evidence, the administrative law judge concluded, "[i]n September, 1969, after showing steady improvement, the claimant was discharged from the mental hospital. It must be inferred that he had made a satisfactory recovery."

Accordingly, upon marshalling the medical evidence, the ultimate finding must be that plaintiff suffered a mental disability of a severe level during the period from February, 1966 until he was discharged from Matteawan in September, 1969.

In its conclusion that plaintiff's mental disorder was not sufficiently severe to preclude him from the performance of "substantial gainful activity", the government asserts that plaintiff's work in the clothes

shop as of April 23, 1968, constituted substantial gainful activity. The Secretary also relies on the fact that plaintiff was employed prior to his institutionalization, but, in my view, this fact does not prove that plaintiff could perform gainful activity during the period of hospitalization at Matteawan.

Plaintiff's performance of tasks in the clothes shop at Matteawan, moreover, does not qualify as substantial gainful work which exists in the national economy. See, 42 U.S.C. § 423(d)(2)(A); Tigner v. Gardner, 356 F.2d 647 (5th Cir. 1966). Although the fact of hospitalization itself is not sufficient to meet the disability provisions of the law, it would seem that therapeutical activities by a medically sedated patient under the supervision and care of hospital attendants do not constitute gainful work in the national economy. In describing his job in the clothes shop at the hearing before the administrative law judge, plaintiff stated:

"...the clothing it had to be bundled and you would tell the ward officer, you know, what was in the bundle or an officer would be there to count, as you separate this stuff. He would make a listing as to what is going to the laundry and when it returned from the laundry, we would separate it. On shower days, when the patient was permitted to take a shower, we would pass out clean clothing and collect the soiled."

Apart from cleaning up the ward, a week in the shoe repair shop, and some time in the tailor shop, plaintiff engaged in no other form of work. As stated by the Superintendent of Matteawan, plaintiff is "not employable in the community at the present time." Plaintiff has shouldered the burden of proving that the impairment was sufficiently severe to preclude all gainful employment consistent with his age, education, and experience. ^{6/}

In full recognition of the fact that analysis of this case requires a sojourn into the vagaries and uncertainties of mental illness, I nonetheless am constrained to find that the Secretary's decision is not supported by substantial evidence. The medical authorities who have followed plaintiff's progress cannot be ignored. The record is replete with medical findings sufficiently precise and detailed to warrant a

^{6/} The hearing examiner stated in his decision on November 27, 1968, that "claimant's ability to engage in substantial gainful activity is limited only by virtue of his confinement." The examiner concluded that claimant was avoiding both trial and employment, an innuendo I find unsupported by the record.

determination that the impairment was severe. In light of the policy that the Act be broadly construed and liberally applied as a remedial statute, Gold v. Secretary of Health, Education and Welfare, 463 F.2d 38, 41 (2d Cir. 1972); Haberman v. Finch, 418 F.2d 664, 667 (2d Cir. 1969), I conclude that plaintiff's disability falls within the coverage of the Act for the period of February, 1966 through September 30, 1969.

The evidence fails to support the conclusion of the Secretary that plaintiff's impairment was not of a level of severity to preclude the performance of substantial gainful activity.

Accordingly, the government's motion is granted in part and denied in part. Settle order accordingly on notice.

Dated: July 19th, 1974


U.S.D.J.

Social Security Award Certificate

Ex. III

Department of Health, Education, and Welfare
Social Security Administration

Date 01/29/75

Name and Address of Payee as the Claimant
Or as Representative of the Claimant

Claim Number 248-38-6959 HA

Type of
Benefit

Date of
Entitlement

Monthly
Benefit

James H Crouch
c/o Sara Halbert
Zapata and Halbert
Attorneys at Law
277 Broadway
New York NY 10007

DISABILITY

09/66

\$115.60

02/68

\$130.70

Amount of First Check:
\$3630.45

The United States District Court has determined that you were under a disability from February 28, 1966 to September 30, 1969, when you were found no longer disabled within the meaning of the law. The first month for which benefits are payable to you is September 1966. Since benefits are paid for the month disability ends and the following two months, your benefits end with November 1969.

If your condition again prevents you from doing substantial gainful work before age 65, you may file a new application for disability benefits. For additional information on how you can receive reduced retirement benefits at age 62 contact your social security office.

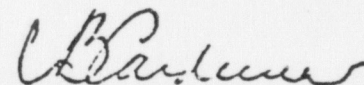
Section 206(b)(1) of the Social Security Act provides that your attorney may ask the court to approve a fee not to exceed 25 percent of past benefits due you. Accordingly, we are withholding the amount of \$1210.15 which represents 25 percent of your past-due benefits of \$4840.60 pending action by the court on the amount of the attorney's fee. The amount withheld will be applied against the fee set by the court and will be mailed directly to your attorney; any remaining amount will be sent to you.

We will notify you later concerning the claim for your child, James Jr.

This action supersedes our previous determination and is in accordance with the decision of the United States District Court.

We are sending a copy of this notice to your attorney.

This certifies that you (or the person(s) on whose behalf you applied) became entitled under the Social Security Act to the social insurance benefits shown.



JAMES B. CARDWELL
COMMISSIONER OF SOCIAL SECURITY

BEST COPY AVAILABLE

EX. 8

GEOFFREY F. OSLER, M. D.
1175 YORK AVENUE
NEW YORK, N. Y. 10021
TEMPLETON 2-9479

Jul 15/75

Dear Sara.

Mr. Crouch was good enough to
come by and tell me of his
gradual progress in his various
cases. Between you you seem
to be getting somewhere.

So what is worth in reading of
through his various papers I
was quoted as having said that
he suffered

"Obsessive Compulsive Neurosis"
This I did not say and I quote
from my report

"Long standing personality
disorder with Paranoid Tends"
In the American Psychiatric Assoc.
Diagnostic + Statistical Manual of
Mental Disorders (APA-DM-II) This
would be

301.0 Paranoid Personality.

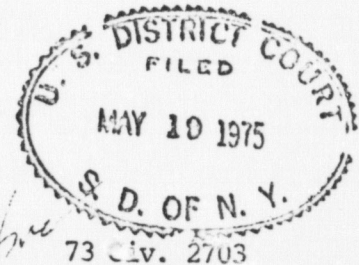
I don't know that it makes much difference to
his successful outcome but I thought
I'd tell you.

Respectfully,
Geoff.

EX 10

MEMO. ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JAMES H. CROUCH,

Plaintiff,

-against-

UNITED STATES of AMERICA and CASPER W.
WEINBERGER, Secretary of Health, Education
and Welfare,

Defendants.

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of SARA HALBERT, DULY sworn to the 15th day of May, 1975, and JAMES H. CROUCH, duly sworn to the 7th day of May, 1975, the undersigned will move this Court at a Motion Term Part I thereof on the 27th day of May, 1975 at 10 A.M. or as soon thereafter as counsel can be heard, for an order directing the Department of Health, Education and Welfare, Social Security Administration, to make payment of all counsel fees to Sara Halbert and disability benefits to James H. Crouch, and for such other and further relief as to the Court may be deemed proper in the premises.

Dated: May 15, 1975

Yours, etc.,

SARA HALBERT
Attorney for Plaintiff
c/o ROBERT CENIOR
32 Court Street
Brooklyn, N.Y. 11201
237-1800

TO: UNITED STATES ATTORNEY
United States Courthouse
Riley Square
New York, N.Y. 10007

cc: Motion Clerk, U.S. District Court
Southern District of New York

1

12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JAMES H. CROUCH,

Plaintiff,

-against-

UNITED STATES OF AMERICA and CASPER W.
WEINBERGER, Secretary of Health, Education
and Welfare,

Defendants.
-----x

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

SARA HALBERT, being duly sworn, deposes and says:

That she is the attorney for the plaintiff in the above entitled proceedings and makes this affidavit in support of a motion for payment of counsel fees pursuant to Section 206 (b) of the Social Security Act (42 U.S.C. 406 (b)).

The captioned proceedings involved a claim by James H. Crouch for disability benefits during the period of time while he was incarcerated at Mattawan State Hospital for the Criminally Insane during the period between February 1966 and September 1969 and subsequent thereto. Upon his release from said institution in 1970 I commenced a claim with the Social Security Administration for disability benefits on behalf of my client. After protracted proceedings and hearings before the HEW, the motion for disability was eventually denied and the proceedings in this Court were instituted after an appeal had likewise been denied by the Appeals Council, Bureau of Hearings & Appeals. The captioned litigation finally resulted in a decision in favor of the Crouch family by Judge Harold R. Ellis, a copy of which is enclosed.

11, 1974 as per the enclosed copy of the judgment. (Ex. II) Application was thereafter made to the Department of Health, Education and Welfare for payment of the benefits and counsel fees.

On January 29, 1975 the Social Security Administration issued a social security award certificate, a copy of which is enclosed herewith and made a part hereof, indicating that the payment due to Mr. Crouch was (Ex. III) \$4,840.60. According to the law payments for his son James Crouch, Jr. are fixed at 50% of that amount, or \$2,420.30. The Social Security Administration in its said letter indicates also that 25% of the past due benefits are being withheld pending the order of this court for setting my fee herein.

I have worked on this case now for almost 5 years. I have had conferences with this client at least between one and two times a week either by phone or in person in addition to the extensive work in the Courts and before the Social Security Administration. Furthermore, if I had known in advance of the risks I took of not being paid at all since this is a contingent matter, plus the delay in getting payment now that I am successful, I would have hesitated to take on this arduous task. I have filled out the forms that the HEW furnished to me to indicate the work I have done before the HEW, a copy of which forms are attached hereto for consideration by the Court. In addition to the work set forth on said forms, I have of course, instituted litigation in this court and have done extensive research in regard to the motions made to dismiss this action, which eventually resulted in the favorable decision of this court.

The HEW Office takes the position now that payment of benefits in regard to James Crouch Jr. will not be processed, since James Crouch Jr. would have to make his own application. This position of HEW is, to put it mildly, ridiculous, as the period of eligibility for such benefits is for the time while he was between 9 and 13 years of age, while he was a dependent of

claimant James Crouch Sr. The young man, who is now 18 years of age, has now disappeared and it does not make sense that I should have to wait for my fee until the day this young man appears on the scene. I have done my work and I think I should be paid the full amount allowed by law, and I respectfully request that this Court direct that payments of ALL of my fee for ALL benefits be paid to the full amount allowed by law.

As a further explanation of the right of counsel as well as the claimant to collect all benefits at this time, I respectfully refer this court to Mr. Crouch's affidavit, which is part of the motion papers.

WHEREFORE I respectfully pray that an order be made directing the payment of 25% of all proceeds payable under the order of this Court hereinabove referred to.

No previous application for the relief sought has heretofore been made.

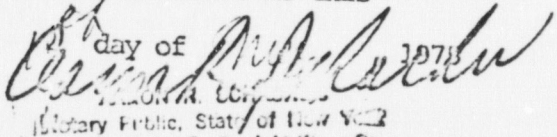
Dated: New York, April , 1975


SARA HALBERT

Sworn to before me this

1st day of

1975


Notary Public, State of New York

No. 24-8733550 - Qual. in Kings Co.

Comm. Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES H. CROUCH,

Plaintiff,

-against-

UNITED STATES of AMERICA and CASPER W.
WEINBERGER, Secretary of Health, Education
and Welfare,

Defendants.
-----X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JAMES H. CROUCH, being duly sworn, deposes and says:

That he is the plaintiff in the above entitled proceedings and he makes this affidavit in support of a motion for payment of counsel fees and benefits pursuant to the order of Judge Harold R. Tyler Jr. dated July 19, 1974.

Deponent was incarcerated at Mattawaean State Hospital during the period of about between February 1966 and September 1969. The order of Judge Tyler provides for payment to be made to me for that period. However, according to the attached Social Security Award Certificate, it appears that the Social Security Administration office feels that I should be paid only for the period of September 1966 to November 1969, cutting down the period of benefits under the disability law of 5 months. Furthermore, the computation of benefits for me has been made as to the law in existence in 1971, which requires a computation on the basis of 40 quarters of work in order to be eligible for full coverage. Prior to 1971 however, such eligibility for full coverage required a period of work of only 20 quarters. Thus, the computation of benefits for me under the 1971 Act is less than for computation during the

period set forth in the order, to wit: February 1966 to September 1969.

The Department of HEW is furthermore refusing to pay to me the benefits due me for my son James Crouch, Jr., who was born on November 4, 1956. During the period of time between February 1966 and September 1969, he was therefore between 9 and 12 years of age. His birth certificate is attached hereto and made a part hereof. ^(Ex. IV) James Crouch Jr. was supported by me during all of the years prior to my hospitalization. While I was in the hospital, I had his legal custody as per attached document signed by his natural mother. ^(Ex. V) I have receipts for his support before, during and subsequent to my release from the hospital. While I was in the hospital, James Crouch Jr. was being taken care of by my late aunt, Queen Kemp who died February 11, 1970. I reimbursed my aunt for the care of my son. After my release from the hospital there were accumulated funds I received from the Veterans Administration upon my release which were in excess of \$2200.00. Attached hereto is an Award Certificate of the Veterans Administration indicating the amount of payments due me for veteran disability benefits. ^(Ex. VI) I have had further assets paid to me from the United Press Association. There is attached hereto a certificate of the United Press Association indicating that an excess of \$2000.00 was paid to me, ^(Ex. VII) which sum was used for the payment of my aunt's debts and funeral expenses. ^(Ex. VIII) Thus, my aunt was reimbursed by me out of my own funds and income for the care of my son, and I respectfully submit that the sum of money being withheld pending the application of my son for said benefits is not warranted. These benefits should be paid to me and my counsel should be paid the 25% from these funds as well as the 25% from the money awarded to me.


My attorney has done a protracted amount of work on my behalf, and she has seen or heard from me continually on a regular weekly basis during the past 4 years. ^(Ex. IX)

My son has disappeared and I do not know his whereabouts, so an application by him is unfeasible and unwarranted.

I respectfully pray that an order be issued by this Court directing the Department of HEW to obey the order of this Court and provide the payment of all disability benefits to me for the period between February 1966 to September 1969 and for the payment of 25% thereof of ALL such benefits to my attorney as and for her counsel fees. I respectfully pray furthermore, that the Court order the Department of HEW to make payments pursuant to the law prevailing during the period of disability.

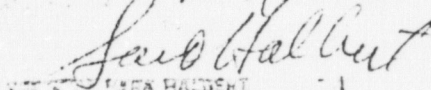
WHEREFORE, I respectfully pray that the motion in all respects be granted.

Dated: New York, April , 1975


JAMES H. CROCCHI

Sworn to before me this

7th day of May, 1975


Laura Halbert
Notary Public, State of New York
No. 24-672-0000
Qualified in Kings County
Notary Seal Expires 12/31/76

Department of Health, Education and Welfare
Social Security Administration

Date 01/29/75

Claim Number 212-38-6959 HA

James H Crouch
c/o Sara Halbert
Zepata and Halbert
Attorneys at Law
277 Broadway
New York NY 10007

Type of Benefit	Date of Establishment	Amount Benefit
DISABILITY	09/66	\$115.60
	02/68	\$130.70

Amount of Last Check
\$3620.45

The United States District Court has determined that you were under a disability from February 28, 1966 to September 30, 1969, when you were found no longer disabled within the meaning of the law. The first month for which benefits are payable to you is September 1966. Since benefits are paid for the month disability ends and the following two months, your benefits end with November 1969.

If your condition again prevents you from doing substantial gainful work before age 65, you may file a new application for disability benefits. For additional information on how you can receive reduced retirement benefits at age 62 contact your local security office.

Section 206(b)(1) of the Social Security Act provides that your attorney may ask the court to approve a fee not to exceed 25 percent of past benefits due you. Accordingly, we are withholding the amount of \$1210.35 which represents 25 percent of your past-due benefits of \$4840.60 pending action by the court on the amount of the attorney's fee. The amount withheld will be applied against the fee not by the court and will be mailed directly to your attorney; any remaining amount will be sent to you.

We will notify you later concerning the claim for your child, James Jr.

This action supersedes our previous determination and is in accordance with the decision of the United States District Court.

We are sending a copy of this notice to your attorney.

Remember that you (or the persons) on whose behalf you are claiming benefits under the Social Security Act to the following benefits shown.

James E. Cardwell

JAMES E. CARDWELL
COMMISSIONER OF SOCIAL SECURITY

15

BEST COPY AVAILABLE

L-x. 14

DEPARTMENT OF HEALTH
BUREAU OF PREVENTIVE MEDICINE
MANHATTAN

DEC 20 1969

[illegible]

August 26, 1965

The undersigned, Rebecca Simmons, hereby deposes and says that:

1. She resides at 55 Lenox Avenue, New York, New York.
2. She is the mother of James Simmons, Born November 14, 1956.
3. Due to illness she finds it quite difficult to properly care for the child.
4. She voluntarily consents to the child father, James H. Crouch taking the child to live with him at 784 Columbus Ave. New York, New York., 10025. Mr. James H. Crouch has agreed to take permanent custody, pending legal adoption.
5. She understands that the child will be (with above consent) the child will be removed from 55 Lenox Avenue., New York, New York, and will reside at 784 Columbus Avenue., New York, New York., 10025.

Signed by Rebecca Simmons
Witness by Harriet Heeler

State of New York
County of New York

Signed before me on August 27th, 1965

Louis Walker

BEST COPY AVAILABLE

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH
BUREAU OF RECORDS AND STATISTICS
NOTIFICATION OF ORDER OF FILIATION

To the Commissioner of Health of the City of New York,
(Director, Bureau of Records and Statistics)

Docket No. P 6064/69

Pursuant to Section 254 of the Judiciary Law, as amended by Chapter 681 of the Laws of 1949 and Section 543 of the Family Court Act Thereto, I, Albert M. Ritter
Clerk of the Family Court, County of NY
do hereby notify the Commissioner of Health of the City of New York that on Dec. 22nd, 1969, 19____
an order of filiation was issued by said Court, in the case instituted in behalf of complainant, Queen Esther Kemp
against respondent, James H. Crouch,
adjudging the said respondent to be the father of the child born out of wedlock to Rebecca Simmons nee Whitner at Metropolitan Hospital,
or if born at home, number and street _____
Borough of Manhattan, in the City of New York, on Nov. 4th, 1956, 19____, and named
at birth (boy) Simmons as shown on original birth record.

This record, bearing Certificate No. 156-56-144179, and which is on file in the Department of Health, also contains the following names:

1. Father none
2. Mother (Maiden Name) Rebecca Whitner

The personal particulars of the adjudged father of this child are as follows:

1. Name James H. Crouch age at time of this birth 29 Years
2. Birthplace (city, or place and State, or County) Ward, S. C.
3. Usual Occupation 100% disabled veteran
4. Kind of business or industry in which work was done _____

The personal particulars of the mother of this child are as follows:

1. Name Rebecca Simmons nee Whitner age at time of this birth 24 Years

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH
BUREAU OF RECORDS AND STATISTICS
NOTIFICATION OF ORDER OF FILIATION

To the Commissioner of Health of the City of New York,
(Director, Bureau of Records and Statistics)

Docket No. P 6061/69

Pursuant to Section 254 of the Judiciary Law, as amended by Chapter 681 of the Laws of 1949 and Section 543 of the Family Court Act Thereto, I, Albert M. Ritter
Clerk of the Family Court, County of NY
do hereby notify the Commissioner of Health of the City of New York that on Dec. 22nd, 1969, 19____
an order of filiation was issued by said Court, in the case instituted in behalf of complainant, Queen Esther Kemp
against respondent, James H. Crouch,
adjudging the said respondent to be the father of the child born out of wedlock to Rebecca Simmons nee Whitner at Metropolitan Hospital,
or if born at home, number and street _____
Borough of Manhattan, in the City of New York, on Nov. 4th, 1956, 19____, and named
at birth (boy) Simmons as shown on original birth record.

This record, bearing Certificate No. 156-56-144179, and which is on file in the Department of Health, also contains the following names:

1. Father none
2. Mother (Maiden Name) Rebecca Whitner

The personal particulars of the adjudged father of this child are as follows:

1. Name James H. Crouch age at time of this birth 29 Years
2. Birthplace (city, or place and State, or County) Ward, S. C.
3. Usual Occupation 100% disabled veteran

4. Kind of business or industry in which work was done _____

The personal particulars of the mother of this child are as follows:

1. Name Rebecca Simmons nee Whitnor age at time of this birth 24 Years

2. Reason if maiden name is different from that shown on original birth record none

3. Birthplace (city, or place and State, or County) North Carolina

4. Total number of children born alive previous to this pregnancy 3 5. Number of children born previous to this pregnancy and now living 3

6. Present address of Mother deceased but petitioner resides at 320 St. Nicholas Ave. #3D NY 10027, NY

The mother requests that the full name of the child shall be as follows:

JAMES

First Name

H.

Middle Name

CROUCH, Jr.

Surname

and is to be entered as such on a new birth record for said child for filing in the Department of Health in accordance with the provisions of the above laws and the Administrative Code of the City of New York which also requires that the original birth record and all papers relating thereto shall be placed under seal.

Date Dec. 12th, 1969, 19____

Deborah M. R...

Signature of Clerk

By: *Benito C. Caballero*
Benito C. Caballero
Asst. Court Clerk.

December 16, 1963

This is to certify that

CONFIDENTIAL

JHXKROUC

James H Crouch
c/o Queen E Kemp
520 St Nicholas Ave
New York NY 10027

Veterans Benefits Award

is awarded Veterans Administration benefits payable in the amount and beginning with the date shown below.

Monthly Amount	Beginning Date
\$ 0220.00	09-12-63

It is MOST IMPORTANT that you note the contents of the attachments which may affect your right to continue to receive these payments.

Encl.
VA Form 21-6761
Copy

A-ROU STAN
H. GARTY

6230

VETERANS ADMINISTRATION

620-6221

dependence. If VA number is unknown, show service number.

VETERAN C. J. BARTON

~~United [unclear] International~~

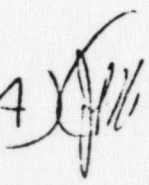
Dec. 8, 1969

HRT:

Jim Crouch was hired in April of 1959, he went off the payroll on Feb. 28, 1966.

His dismissal pay under UTW contract calls for 14 weeks at the rate of \$161.90, which is the 5 year maintenance rate, for a total of \$2,266.60.

J.P.

FROM (R-EX. A) 

cc: AMT FT NY

EXHIBIT D-34

New York
December 9, 1969

APB:

We have decided to pay James Crouch, a former maintenance man, 14 weeks of severance pay at the present fifth-year maintenance scale of \$161.90.

Rather than take this as a lump sum, Crouch wants it divided into weekly installments. Because his circumstances are pressing, he would like to pick up the first check tomorrow. I would be particularly grateful if this can be done for him. Hereafter he will stop by on Fridays to pick up the checks at the Cashier's cage.

Many thanks.

H.R.T.

HRT:JL

New York, Dec. 9, 1969.

APB:

Please advance \$100 to James H. Crouch, former NX maintenance man (SS/ 248-38-6259), against his dismissal pay of 14 weeks at \$161.90 per week (fifth-year maintenance scale) totaling \$2,266.60. Charge advance to employees.

Commencing with week ending Dec. 13, 1969, please pay Crouch \$161.90 per week for 14 weeks. Last payment will be for week ending Mar. 14, 1970.

Deduct the \$100 advance from the first check.

Crouch will pick up his checks each Friday at the Cashier's window.

TIP

APB 12, 1970

248-35-6959

C APB HV

IMP

James Crouch, our former maintenance man, would like in a lump sum the remainder of the months we agreed to pay him upon his separation.

- CLM:ma There is an element of urgency in this and Crouch will call you around 10 a.m. today to see when it might be ready. He has normally been coming in on Fridays to pick up the weekly installments but would very much like the remainder today if at all possible. thanks

HRT

(15)

EXHIBIT D-5

New York, Feb. 12, 1970.

APD:

Please pay James H. Grouch, former NX
maintenance man (SU# 248-38-3959) \$647.60,
representing the final four weeks of his dis-
missal pay.

He requested this lump sum payment because
of a death in his family. He said he had no
money to pay for the funeral, and asked whether
he could pick up the check by noon today.

IHP

(15)

EXHIBIT

United Press International

Order to Cashier:

Form 12, 1970

Please draw a check for the amount of \$472.83
payable to the order of:

JAMES H. CROUCH
SST 2/2-73-0159

Final four wks of disburse.

DR: Indemnities	3300-10010	447.00
CR: IFF-NT	1000-21211	113.00
IFF-FICA	1000-21210	31.03
IFF-NT 2/2-73-0159	22000	
	1000-21211	25.04

Please attach copy of this order with check.

Please give check to James Crouch so that Crouch can
pick it up for disbursement.

cc: JHC
file

James R. Crouch
JAMES REX
PAYROLL DEPT.

Crouch requested full payment of final four weeks due
to an emergency.

Copy 18 37-8-11
2/28/77

JHC
CR

BEST COPY AVAILABLE

Henry W. Payne, Inc.



FUNERAL DIRECTORS

273 LENOX AVENUE - TELEPHONE (212) 662-4840

New York, N.Y. 10027

February 18th, 1975

To Whom It May Concern;

Please be advised that Mrs. Queen Esther Keap died in the Harlem Hospital, New York City, New York on February 11th, 1970, and was interred in the family plot in Roschill Cemetery, Linden, New Jersey on February 17th, 1970.

Further, that Mr. James H. Crouch, nephew of the above named deceased, of 160 West 97th Street, Apt. #4L, and formerly of 320 St. Nicholas Avenue, New York City, New York did make the necessary funeral arrangements and did assume full responsibility for the proper burial of his Aunt, and subsequent thereto did pay in full the Funeral Bill rendered in the amount of \$999.00 on February 13th, 1970, whereupon a statement marked paid in full was issued him at that time.

Thanking you for your attention, I am,

Very truly yours,

Henry W. Payne, Inc.
Funeral Directors

Catherine A. Payne
Catherine A. Payne,
Manager

State of New York
County of New York
City of New York:SS:

Sworn to and subscribed to before me this

18 day of February, 1975.

Henry T. Freeman

Notary Public.

HENRY T. FREEMAN
Notary Public, State of New York
No. 31-6596950
Qualified in New York County
Commission Expires March 30, 1976

FOR REPRESENTING A SOCIAL SECURITY CLAIMANT
(Please note information on the reverse)

Fee Approved \$
Approving Officer:

I request approval to charge a fee of \$ 1210.15 + 1/2 of claimant's beneficiary for services performed as a representative of
James H. Crouch in a claim before the Social Security Administration.

ENTER NAME OF PERSON ON WHOSE SOCIAL SECURITY RECORD CLAIM IS BASED

ENTER THE SOCIAL SECURITY NUMBER OF PERSON ON WHOSE RECORD CLAIM IS BASED

James H. Crouch

248-38-6959

THE INFORMATION BELOW IS FURNISHED IN SUPPORT OF THIS PETITION

1. My services as a representative began June 1970 and ended To date, Feb. 20, 1975
(Date) (Date)

2. Itemization of Services Rendered (Do not include services in connection with court proceedings)

DATE	(Itemize each meeting, conference, item of correspondence, telephone call, and each activity engaged in, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case.)	TIME SPENT (To Nearest Quarter Hour)
<u>6/20/70</u>	<u>Application for benefits filed, conference with client</u>	<u>3 hours</u>
<u>7/6/70</u>	<u>Application for reconsideration filed " " "</u>	<u>3 "</u>
<u>11/2/71</u>	<u>Application for reconsideration denied " " "</u>	<u>2 "</u>
<u>11/2/71</u>	<u>Request for hearing filed and conference with client</u>	<u>2 "</u>
<u>11/19/72</u>	<u>Service of subpoena for hearing prepared & served</u>	<u>4 "</u>
<u>11/22/72</u>	<u>11/24/72 Examination of medical record and preparation for hearing</u>	<u>10 "</u>
<u>12/25/72</u>	<u>Hearing before Administrative Law Judge</u>	<u>3 "</u>
<u>1/30/73</u>	<u>Hearing decision and conference with client</u>	<u>2 "</u>
<u>2/2/73</u>	<u>Conference with client</u>	<u>2 "</u>
<u>4/6/73</u>	<u>Partial of report for review & conference with client</u>	<u>2 "</u>
	If more space is needed, attach separate sheet. TOTAL HOURS	<u>33 hours</u>

3. Did you render any services relating to this matter before any State or Federal court?
If "Yes," what fee did you or will you charge for services in connection with the court proceedings? ☒ Yes ☐ No

4. Have you and your client tentatively agreed upon a fee for your services?
If "Yes," please specify the amount (or the agreed-upon formula). 35% of recovery to \$2000.00
☐ Yes ☐ No

5. Have you received, or do you expect to receive, any payment for your representation other than the fee indicated above, such as reimbursement for expenses you incurred? If "Yes," itemize below: ☐ Yes ☒ No

\$
\$
\$
TOTAL \$

I certify that the above information is true and correct to the best of my knowledge and belief. I further certify that I have furnished a copy of this petition and any attachments to the person(s) for whom the above services were performed.

NAME OF PETITIONER

DATE

ADDRESS

James H. Crouch

March 3, 1975

277 Broadway, New York, N.Y. 10007

OTHER PERSONS ASSOCIATED, IF ANY

TELEPHONE NO. AND AREA CODE

(212) EL 4-0770

SSA 1509 (7-69)

REPRESENTATIVE'S COPY

PETITION FOR SOCIAL SECURITY REPRESENTATIVE
(Please note information on the reverse)

Fee Approved \$ _____
Approving Officer: _____

I request approval to charge a fee of \$ _____ for services performed as a representative of _____ in a claim before the Social Security Administration.

ENTER NAME OF PERSON ON WHOSE SOCIAL SECURITY RECORD CLAIM IS BASED

James H. Crouch

ENTER THE SOCIAL SECURITY NUMBER OF PERSON ON WHOSE RECORD CLAIM IS BASED

248-38-6959

THE INFORMATION BELOW IS FURNISHED IN SUPPORT OF THIS PETITION

1. My services as a representative began June 1970 and ended To date Feb. 20, 1975
(Date) (Date)

2. Itemization of Services Rendered (Do not include services in connection with court proceedings)

DATE	(Itemize each meeting, conference, item of correspondence, telephone call, and each activity engaged in, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case.)	TIME SPENT (To Nearest Quarter Hour)
	Interviews and conferences with client between 1970 to date, of a minimum of 2 times a month over a period of 4 years to date	100 hours
	The most recent of said interview pertains to a conflict of the payment of benefits including long distance phone calls to the SSA administration office in Baltimore and telephone conferences with the local SSA office. This is a minimum estimate since in the last two weeks at least 10 hours have been spent with client on the occasion of 5 different conferences.	
	Preparation of voucher forms	
	If more space is needed, attach separate sheet.	TOTAL HOURS <u>100 hours</u>

3. Did you render any services relating to this matter before any State or Federal court? ☐ Yes ☐ No
If "Yes," what fee did you or will you charge for services in connection with the court proceedings? \$ _____

4. Have you and your client tentatively agreed upon a fee for your services? ☐ Yes ☐ No
If "Yes," please specify the amount (or the agreed-upon formula). \$ _____

5. Have you received, or do you expect to receive, any payment for your representation other than the fee indicated above, such as reimbursement for expenses you incurred? If "Yes," itemize below: ☐ Yes ☐ No

\$ _____
\$ _____
\$ _____
TOTAL \$ _____

I certify that the above information is true and correct to the best of my knowledge and belief. I further certify that I have furnished a copy of this petition and any attachments to the person(s) for whom the above services were performed.

SIGNATURE OF PETITIONER <u>[Signature]</u>	DATE <u>March 3, 1975</u>	ADDRESS <u>277 Broadway, New York, N.Y. 10007</u>
FIRM WITH WHICH ASSOCIATED, IF ANY		TELEPHONE NO. AND AREA CODE <u>(212) 344-0320</u>

REPRESENTATIVE'S COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EX. 11

JAMES H. CROUCH,

Plaintiff

- v -

UNITED STATES OF AMERICA and
CASPAR WEINBERGER, Secretary
of Health, Education and Welfare

Defendants.

AFFIDAVIT

73 Civ. 2703 (HRT, Jr.)

STATE OF NEW YORK)
COUNTY OF NEW YORK ss:
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and, as such, am in charge of the defense of the above-captioned action.
2. I make this affidavit in response to the application of plaintiff's attorney, Sara Halbert, to fix attorneys fees for her in the amount of 25 percent of the award to the plaintiff herein or \$1,210.00, and the application of the plaintiff for post judgment relief on a issue raised for the first time in this application.
3. The government has no objection to the fee applied for which is appropriate under the statute, applicable regulations and circumstances of this case.
4. I am informed by the Social Security Administration that a sum in that amount has been withheld from the

total benefits awarded to plaintiff herein and will be forwarded to Ms. Halbert as soon as I am able to supply the agency with a copy of the application as granted by the Court.

5. In addition to the application by the plaintiff's attorney, the plaintiff himself has applied for relief in addition to the relief awarded in the judgment entered herein.

6. The complaint in this action sought to overturn the determination of the Secretary of Health, Education and Welfare that plaintiff was not entitled to disability benefits. The action, a review of the Secretary's determination, was commenced pursuant to Section 405(g) of Title 42, United States Code.

7. The Honorable Harold R. Tyler, Jr. affirmed the Secretary in part and reversed him in part awarding plaintiff the sum of \$4,840.60 for disability benefits for the period of February 28, 1966 through September 30, 1969.

8. I am informed by plaintiff's attorney that plaintiff has received a check for that amount less the amount of the attorney's fee applied for in the pending motion.

9. Plaintiff now, by means of a post judgment application, raises for the first time the issue of certain benefits which he claims are due from the Social Security Administration to his son. Plaintiff takes the position that since he paid for his son's support and expenses during the period when benefits were due to his son, he, the father, should now receive those benefits directly.

10. Regardless of the merit or lack thereof in this position, it is clear that such relief cannot be awarded by this Court in a post judgment application on an entirely different action.

11. Pursuant to the statute (42 U.S.C. 405(g)), the jurisdiction of this Court is limited to a review of the transcript of the proceedings before the Secretary of Health, Education and Welfare in the administrative remedy, the exhaustion of which is a prerequisite to the maintenance of an action in District Court.

12. The issue of the son's entitlement to benefits and the auxiliary issue of the father's entitlement to the son's benefits was never raised in the administrative proceedings nor was it put in issue by the complaint. It has never been presented, much less ruled upon, by either the agency concerned or the Judge in the action herein. On the contrary, it is raised for the first time here in a post judgment application.

13. This Court lacks jurisdiction over the subject matter of the entitlement of plaintiff's son to Social Security benefits both because of the failure of exhaustion of administrative remedies and the failure to raise the issue in the complaint.

WHEREFORE, the application of Sara Halbert for attorney's fees should be granted and the application of

plaintiff for post judgment relief should be denied.

V. PAMELA DAVIS

V. PAMELA DAVIS
Assistant United States Attorney

Sworn to before me this
23rd day of May, 1975.

Notary Public

RAYMOND L. LEE
Notary Public, State of New York
J. Edgar Hoover, New York County
Term Expires March 30, 1977

BEST COPY AVAILABLE

VETERANS ADMINISTRATION
252 Seventh Avenue
New York, New York 10001

OCTOBER 2 1970

File Number

020998589 00

306

JHCROUC

This is to certify that

JAMES H CROUCH
160 W 97 ST APT 4L
NEW YORK NY 10025

Veterans Benefits Award

is awarded Veterans Administration benefits payable in the amount and beginning with the date shown below.

Monthly Amount	Beginning Date
----------------	----------------

\$ 0375.00	07-01-70
0360.00	11-04-74

It is MOST IMPORTANT that you note the contents of the attachments which may affect your right to continue to receive these payments.

Encl. 21-6754
VA Form DAY APPEARED
Copy

VETERANS ADMINISTRATION

ADMINISTRATIVE SERVICES

INCREASED DISABILITY COMPENSATION

One item(s) checked below apply to you:

- ☐ 1. The evidence establishes that your service-connected condition has increased in severity. The rating for your disability will be increased from _____ % to _____ %.
- ☐ 2. Due to the increased severity recently recorded in your physical condition, the following evaluations and combined rating have been assigned for your disabilities:

Condition	Prior %	New %
-----------	---------	-------

Combined

The combined rating is not arrived at by adding the percentages of your disabilities but is computed in accordance with a combined rating table.

You will receive payments based on the increase, less payments that have already been made.

- ☐ 3. Veterans having a 50% or more service-connected condition may be entitled to additional compensation for a wife, dependent parents, or unmarried children under 18 (or under 23 if attending a school that has been approved by the VA) or where prior to age 18 the child has become permanently incapable of self-support because of mental or physical defect. In order that additional benefits may be payable from the earliest possible date the evidence indicated below and identified by check mark should be submitted within 60 days from the date of this notice. (NOTE: If you are unable to secure a certified copy of any record requested, please let us know as other types of proof may be permitted.)

- ☐ a. A certified copy of your marriage certificate.
- ☐ b. Your certified statement showing the date, place and circumstances of the dissolution of your and your wife's prior marriages, if any.
- ☐ c. VA Form 21-686c, Declaration of Marital Status.
- ☐ d. Certified copy of birth certificate of your children, who meet the requirements stated above.
- ☐ e. A certified copy of your birth record on which the names of your parents are shown.
- ☐ f. VA Form 21-509, Statement of Dependency. This form should be completed by your parent(s).
- ☐ g.

- ☐ 4. VA Form 21-674, Request for Approval of School Attendance, must be completed and signed by yourself and a school official for (Name(s) of Student(s)) _____, school child(ren) between the ages of 18 and 23.

- ☐ 5. VA Form 21-674b, School Attendance Report, must be completed by a school official and be returned to the VA within 10 days from the date (Name of Student) _____ begins the course. If it is not returned, benefits payable because of school attendance must be discontinued.

- ☒ 6. Your service connected nervous condition continues to be evaluated 70% disabling from 10-1-70, and your combined evaluation is 70% disabling from 10-1-70. However, you are granted total disability benefits from that date. This decision granting you total disability benefits is based on the evidence which shows you to be physically unable to engage in substantially gainful employment. Any change in your employment must be reported.

Any new evidence which you believe would justify a different decision should be sent to us promptly. If you have no further evidence but believe this decision is not correct, you may initiate an appeal to the Board of Veterans Appeals by filing a notice of disagreement at any time within one year from the date of this letter. A notice of disagreement is simply a written communication which makes clear your intention to initiate an appeal and the specific part of our decision with which you disagree. It should be sent to this office. In the absence of timely appeal, this decision will become final.

Encl. VA Forms

☐ 21-686c

☐ 21-509

☐ 21-674

☐ 21-357c

☐ 21-674b

CZ

VA FORM 21-6754
JAN 1970

SUPERSEDES VA FORM 21-6754, DEC 1968.

(SEE REVERSE)

791-0905

EX. 1

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE LEE P. GAGLIARDI
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

January 15, 1976

Unfortunately I have been unable to find a copy of the memorandum in Crouch v. Weinberger in chambers.
A copy of the memorandum is on file in the Clerk's office.

Very truly yours,

David J. Martin
Law Clerk

Handwritten:
Hagthorn Spence
1/19/76
Crouch in CD
followed up on
this in person

CLERK'S OFFICE
United States District Court
FOR THE
SDNY

JAMES H. CROUCH

USA ~~ANEX~~ ET ANO

Handwritten: copy to be made of Spence
791-0169

Civil Action No. 73 Civ. 2703

There was entered on the docket 10/22-75
an order ~~judgment~~ Cagliardi, J. , 19

U.S. A.O. NO. 145

RAYMOND F. BURGHARDT

, CLERK

Sara Halbert
ATTORNEY AT LAW

James J. Cahill (R&)

COPY RECEIVED

February 13, 1976
UNITED STATES ATTORNEY

EX 14
32 COURT STREET
SUITE 1105
BROOKLYN, N. Y. 11201
(212) 237-1800

February 13, 1976

Honorable Judge Lee P. Gagliardi
United States Court House
Foley Square
New York, N.Y. 10007

RE: Crouch vs. Weinberger
73 Civ. 2703

Dear Judge Gagliardi:

I am enclosing herewith a duplicate of an Order with Notice of Settlement forwarded to the Clerk of the Court by letter dated December 12, 1975, a copy of which is enclosed herewith. An affidavit in opposition to the proposed Order was submitted by Pamela Davis dated December 17, 1975, as per the enclosed copy. On January 6th an entry was made on the docket for the captioned action, as per the enclosed copy of said docket.

I have examined the file in person and have also caused my client to examine the same. It appears that the within Order has not been filed in the Court records and seems to have disappeared. I spoke to Mr. David J. Martin, Law Clerk in your office, and he wrote me on January 15, 1976 as per the enclosed copy. I again wrote to Mr. Martin. I have made several telephone calls to your office, which have not been answered.

My client is most disturbed that these papers have gone astray without explanation. Please note that the previous motion papers setting my fee filed on October 22, 1975, as per the enclosed copy of the docket are also missing from the Court records.

My client is delivering this letter in person to your office, so that there will be no further misplacing of the papers herein. I would appreciate a reply to the within letter.

Very truly yours,

Sara Halbert
SARA HALBERT

SH:VT
Enc.

cc: James H. Crouch

cc: V. Pamela Davis

*Recd
2/13/76
AET*